Maharashtra Distilleries Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: March 7, 2003

Acts Referred: Constitution of India, 1950 â€" Article 14

Citation: (2003) 2 KLT 786

Hon'ble Judges: Jawahar Lal Gupta, C.J; R. Basant, J

Bench: Division Bench

Advocate: V. Giri, for the Appellant; K.P. Dandapani and Santhosh Mathew and C. Vathsalan, Sr. Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, C.J.
Are the conditions laid down by the Kerala State Beverages (Manufacturing and Marketing) Corporation

Limited vide its notice dated February 11, 2002, for execution of rate contract by the Suppliers arbitrary and illegal? Is the Corporation not

entitled to insist upon the earnest money deposit; restrict the brands to the maximum of 8 and levy the fees as mentioned in the impugned notice?

These are the questions that arise for consideration in these bunch of writ petitions. Learned counsel for the parties have referred to the facts in

O.P. No. 6705/2002. These may be briefly noticed.

2. The petitioners are licensed under the Abkari Act, 1967 and the Rules to manufacture Indian Made Foreign Liquor within the State of Kerala.

On May 11, 1983, the State Government took a policy decision to establish a Public Sector Corporation to procure spirit; arrange blending;

bottling; selling and supply of arrack and also for dealing with sale of foreign liquor. It appointed a committee to consider the matter. A proposal

was submitted by the committee. It was considered by the Government. Vide order dated February 1, 1984, the proposal for the incorporation of

the public Corporation by the name of Kerala State Beverages Limited was approved. The Memorandum and Articles of Association of the

Company were also approved. A copy of this order has been produced as Ext.P1. Thereafter, the Corporation has been periodically issuing

notices inviting offers for registration for supply of Indian Made Foreign Liquor. It is the admitted position that the Corporation is ""the monopoly

purchaser and distributor of "" Foreign Made Foreign Liquor, Indian Made Foreign Liquor (Brandy, Whisky, Rum, Gin, Wine, Vodka etc.) and

Beer in the State of Kerala.

3. In February, 2002, the Corporation invited sealed offers from manufacturers owning a Distillery/Brewery/Blending Unit for registration and for

entering into rate contract for the supply of Foreign made Foreign Liquor, Indian made Foreign Liquor and Beer from April 1, 2002. Certain

conditions were laid down. The relevant condilions which are the subject matter of challenge in these petitions are contained in paragraphs 3(a),

3(b), 5(f), 5(i), 18(b) and 22 of the notice, A copy has been produced as Ext.P4. These provide as under:

3(a). Offers shall be for entering into rate contract for supply of FMFL/IMFL/BEER to the Corporation. Offers shall be accompanied by a Bank

Draft for an amount of Rs. 10,00,000/-(Rupees ten lakhs only) drawn in favour of the Kerala State Beverages (Manufacturing and Marketing)

Corporation Ltd., payable at Thiruvananthapuram towards initial Earnest Money Deposit. The EMD for exclusive wine suppliers shall be Rs.

50,000/-. The EMD bears no interest. Offers which do not satisfy the conditions are liable to be rejected and the Earnest Money deposit will be

refunded. For a quantity of business up to 15,000 cases, EMD shall be Rs. 10 lakhs and shall progressively increase by Rs. 1 lakh up to an

addition of every 15,000 cases transacted. This is up to a turnover of 1.5 lakh cases. Beyond 1.5 lakh turnover Rs. 2 lakhs for every additional

25,000 cases will be realised. The maximum EMD will be Rs. 40 lakhs.

(b) Offers received without the EMD of Rs. 10 lakhs will be rejected.

5(f) The number of brands quoted shall not exceed a maximum of 8 brands.

5(i) Transfer of liquor from the Corporation''s warehouse to its own FL1 shops will not be considered as sale.

18(b) The value of transit or godown breakage (if any) along with duties leviable thereon duly recorded by the Corporation shall be debited to the

Supplier. Service charges as approved by the Board of Directors for all routine purchases to the Corporation''s FL1 shops will be debited to the

supplier. Transfer Fee for inter warehouse transfer, discount on special purchase to Corporation''s FL1 shops, revalidation fee, regulari-salion fee,

display charges etc. will also be debited to the supplier.

22. Arbitration. All disputes and claims that may arise between the Corporation and the supplier in respect of the purchases made under the

contract shall be referred to arbitration only and not to any Court of Law. The Commissioner of Excise, Kerala will act as Arbitrator whose

decision shall be final and the arbitration proceedings shall be at the city of Thiruvananthapuram.

4. The petitioners allege that the Corporation has an absolute monopoly. The movement of liquor within the State is ""completely channalised and

controlled"" by the Corporation. The manufacturer ol"liquor can sell it only to the Corporation. In case they do not accept the vague and arbitrary

conditions as laid down by the Corporation, they will have to close their business. The conditions laid down in the notice are vague, arbitrary and

unfair. The Corporation is misusing its monopolistic status. Disobedience would entail ""a disability to continue the trade."" Thus, immediately after

the issue of the notice, they submitted a representation dated February 26, 2002. A copy has been produced as Ext.P5. Some of the members of

the Federation were told that the conditions shall not be varied. Thus, the petitioner*were left with no alternative except to approach this Court.

5. The petitioners maintain that acceptance of the arbitrary conditions would make the conditions of contract ""impervious to challenge at the

instance of the suppliers during the currency"" of the contract. Thus, they had approached this Court even before the rate contract was finalised.

6. The petitioners allege that the provision for Earnest Money Deposit ranging from Rs. 10 lakhs to Rs. 40 lakhs is expropriatory. The restriction

on the number of brands to a maximum of 8 is only calculated to force the supplier to submit at least two tenders and to collect an extra amount of

Rs. 10 lakhs by way of Earnest Money Deposit. The transfer of liquor from the warehouse of the Corporation to its own shops, which are licensed

to sell, is not considered as sale. In fact, the ""removal of goods from FL9 to godowns of FL1 shops is only in the course of sale by a whole sale

dealer to a retail licensee."" Still further, the terms of payment lead to a most unreasonable consequence and are, thus, arbitrary. The petitioners

maintain that the provision for the levy of service charge, transfer fee, discount on special purchase, the revalidation fee, regularisation fee and

display charges etc. is not only ""gloriously vague"" but also unfair and arbitrary. Even in the case of a dispute, when the matter has to be referred for

arbitration, the Corporation has arbitrarily laid down that the Commissioner of Excise who is the Chairman of the Corporation, shall be the sole

arbitrator. While the petitioners have no objection to the provision for arbitration, they maintain that appointment of the Chairman as the Arbitrator

is unjustified. On these premises, the petitioners pray that the impugned clauses viz. 3(a), 3(b), 5(f), 5(i), 18(b) and 22 as stipulated in Ext.P4 be

declared arbitrary and illegal.

7. A counter affidavit has been filed on behalf of the 2nd respondent by Mr. M.V. Sasikanthan, the Secretary of the respondent Corporation. The

claim as made by the petitioners has been controverted. It has been inter alia averred that it is not ""mandatory for any manufacturer to register

himself or enter into a rate contract....."" The impugned notice does not affect the freedom of trade outside the State of Kerala. The controversy in

the present case relates to rate contract. The matter falls strictly in the domain of private law. It is a commercial transaction. It is not statutory in

nature. It is open to the respondent to lay down the terms before aconcluded contract is arrived at. Such a matter falls outside the purview of

judicial review.

8. The conditions laid down in Ext.P4 are ""for ensuring a mutually agreeable contract wherein the interest of trade is protected arid the interests of

both sides are adequately secured."" The conditions are not arbitrary. The earnest money deposit ""is realised from the offerors to ensure that those

making an offer for supplies to Kerala State Beverages Corporation are serious liquor manufacturers and in a contract with a Government

regulatory body they would not simply place a proposal"" which might deceive the public. The money deposited by the supplier can be available

for forfeiture in a case of any mis-statement, wrong doings ...."" Similarly, the restriction on the number of brands and the levy of fees have been

justified. Detailed reply has been given in respect of each of the matters. On these premises, the respondent prays that the petitions be dismissed

with costs.

9. The petitioners have filed a reply affidavit controverting the claim as made by the 2nd respondent. They maintain that having; acquired ""the status

of a monopolistic channeling agency, the Corporation now stipulates that the petitioners can do trade at their terms and conditions or are at liberty

not to trade in the State."" The attitude is reflective of arbitrariness and is violative of Article 14 of the Constitution. The petitioners have also

produced the details regarding payment for the period from May 1, 2002 to May 15, 2002 as Ext.P7.

10. Learned counsel for the Parties were heard. On behalf of the petitioners, Mr. Giri contended that the conditions stipulated in the notice are

arbitrary. Judicial review in contractual matters is not excluded. Thus, he prayed that the relief as prayed for in the Writ Petition deserves to be

granted. On behalf of the respondents, the arguments were initially addressed by Mr. K.P. Dandapani. On a later date, Mr. Santhosh Mathew

continued these. Learned counsel contended that the petitions are not maintainable. The requirements for deposit of earnest money and payment of

service charges etc. are not arbitrary. Thus, he prayed that the petitions be dismissed.

11. The two questions that arise for consideration are:

(1) Can the jurisdiction of the Writ Court be invoked in the circumstances of the present case?

(2) Are the impugned conditions arbitrary and unfair so as to be declared as violative of Article 14 of the Constitution?

Regarding (1)

12. Mr.Giri submitted that the respondent-Corporation enjoys an absolute monopoly in the trade of liquor. The manufacturer cannot sell anything

to anyone in the State. It can only supply to the Corporation. Since the Corporation enjoys a monopoly, it should not be given the discretion to act

arbitrarily. On the other hand, Mr. Dandapani submitted that the Corporation has merely invited offers. Every manufacturer is free to take a

decision. If it wants to supply, it has to accept the conditions as laid down by the Corporation. Thus, the petitioners cannot challenge the validity of

the conditions.

13. The traditional view has been that every person has complete freedom of contract. Even when one of the parties is a public body, the argument

based on freedom of contract was invariably accepted. However, the traditional view has undergone a gradual change.

14. The difference between Public and Private Law has been very lucidly brought out by Lord Denning in The Closing Chapter" at Page 134 in the

following words:

In public law the central principle is that a public authority mustproperly perform the public function assigned to it by the law. It must not exceed

the powers, which have been entrusted to it: and it must duly perform the duties, which have been laid upon it. If it does not do so, it is acting ultra

vires. It can be called to account by any citizen who has a sufficient interest in the matter.

In private law, there are several principles. In the view of contract that a man should keep his promises. In the law of tort that a man should take

reasonable care not to injure his neighbour. If he does not do so, he is liable in damages by the remedy of a writ or by an action. And so forth.

Further, at page 137, Lord Denning says:

Again, if a public authority is entrusted, as part of its public law function, with the exercise of a discretion, it must take into account all relevant

considerations. It must not be influenced by any irrelevant consideration. And its discretion must be exercised reasonably - in this sense, that it must

not be so unreasonable that no reasonable authority could have reached it.

15. Thus, no authority can act arbitrarily. Every action must be founded on reason and should be reasonable.

16. There is a good reason for this change in thought. With the passage of time, the Governmental functions have been expanding. The

Government''s activities are no longer confined to the promulgation of law and maintenance of order or performing other public functions. They are

entering every field of human activity. Even commerce. In fact, business seems to be becoming the Government''s main business. From flying to

food. Hotels and hospitality. And so on. In this situation, the distinction between public law and private law functions is getting thinner. So has the

court''s perception undergone the inevitable change.

17. Ms. Sue Arrow Smith, in her article - ''Judicial Review and the Contractual Powers of Public Authorities'', 106 The Law Quarterly Review

277, has observed as under:

In this brief survey it has been suggested that the perception of contract as a ""Private"" matter appears to have influenced the courts'' approach to

the judicial review of the Government''s contractual activities. In a number of cases, the courts have looked for some special element of ""public

law"" before they would review the exercise of contractual powers, an approach which has produced some artificial distinctions. It has been

suggested that it is difficult to see why the simple fact that the power in question is a contractual one should affect the scope of judicial review. It

may be purely fortuitous whether a regulatory scheme involves a contractual relationship or whether it is carried out purely by unilateral regulation.

Even when an activity has a parallel in the private sector - as with procurement, leasing or employment - public law principles designed to protect

citizens should apply because of the public nature of the body, and they may also have some role in protecting the public interests. The mere

existence of a contract in any of these cases is not a convincing argument for saying that the applicant should have negotiated for himself the

protection normally given by public law.

18. The Courts in India have also moved in this direction. The matter has been considered by their Lordships of the Supreme Court in Ramana

Dayaram Shetty Vs. International Airport Authority of India and Others, . The case involved the acceptance of a tender by the Authority. Only

registered Second Class Hoteliers with at least five years"" experience were eligible to submit tenders. The authority accepted the tender of a

person who did not fulfill this condition. The action was challenged by the petitioner. The High Court had dismissed the Writ Petition in limine. On

appeal, it was inter alia observed as under:

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to

be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

xxx xxx xxx

Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies.....

Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal

protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of

such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its

arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reichinan especially stimulating article on ""The New Property

in73 Yale Law Journal 733, ""that Government action be based on standards that are not arbitrary or unauthorised."" The Government cannot be

permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having gray hair or belonging to a

particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting

largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

19. The principle of fairness was, thus, applied to a commercial organization like the International Airport Authority of India. In that context, it was

observed that ""where a Corporation is an instrumentality or agency of Government, it would in the exercise of its power or discretion, be subject to

the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above

must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise and it

cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle

which meets the test of reason and relevance.

20. Still further, in paragraph 21, it was observed that there the ""principle of reasonableness and rationality which is legally as well as

philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it

be under authority of law or in exercise of executive power without making of law.

21. Mr. Dandapani has referred to the decision of their Lordships of the Supreme Court in G.B. Mahajan and Ors. v. Jalgaon Municipal Council

and Ors. (1991 SCC 91). This was a case where the Municipal Council had entered into a contract with a person for the construction of a

building. The terms of the contract were challenged by the residents of the town. It was inter alia alleged that the authority could have either put up

the construction itself or awarded the project to abuilding contractor. The method of self-financing adopted by the Municipal Council was ultra

vires. It was also contended that the scheme as prepared by the Municipal Council was arbitrary and unreasonable inasmuch as it provided for

unjust enrichment of the contractor. In this context, it was inter alia observed by their Lordship that ""reasonableness as the test of validity is not the

courts own standard of reasonableness as it might conceive it in a given situation."" It was further observed that ""reasonableness in administrative

law must distinguish between proper use and improper abuse of power."" There is no quarrel with this proposition. However, the only issue is - Are

contracts totally out of the purview of judicial review? On facts, it was found by their Lordships that the charge of arbitrariness could not be

upheld. Thus, the appeal was dismissed. We find nothing in the decision which may disentitle the Court from going into the matter.

22. Counsel for the respondents also referred to the decision in Delhi Science Forum and others Vs. Union of India and another, . The issue in the

case related to the invitation of tenders for providing telephone service. In this context, it was inter alia observed that the policies which have been

adopted by the Parliament could not be decided in a Court of Law. With regard to the argument under Article 15, it was held that there was no

violation.

23. Learned counsel referred to various other decisions including the decision in the case of TATA Cellular v. Union of India (1994 (6) SCC 651).

Even in this case, the test of Article 14 was applied. It was observed that only the decision making process and not the merits of the decision itself

is reviewable.

24. There cannot be a hard and fast rule. However, one thing is clear. Every action of a public authority has to meet the test of reasonableness.

While applying the test, the Court cannot substitute its own view for that of the authority. So long as the process of decision-making is not

arbitrary, the Court cannot interfere with the decision by substituting its own opinion for that of the competent authority. However, on this basis, it

cannot be said that whenever the Government or any of its instrumentalities enters upon a contract, the matter cannot be subjected to judicial

review or that it falls within the ambit of private law and that there is no element of public law.

25. What is the position in the present case?

26. Admittedly, the Corporation was created by the Government. It is in the public sector. The first three promoters of the Company were senior

Government Officers. The initial capital of the Corporation was provided by the Government. Its Memorandum and Articles of Association were

approved by the Government. For all intents and purposes, it is aGovernment Company. It is an instrumentality of the State. Still further, the

Corporation is the monopoly purchaser and distributor of liquor in the State. It is a regulatory body set up by the Government. Its actions have to

conform to the Constitutional mandate of fairness as embodied in Article 14 of the Constitution. This would be so even in a case where it invites

tenders for the supply of liquor. Ultimately, it is on the basis of these tenders that the rate contract shall be executed. In doing so, it cannot act

arbitrarily or unfairly. It is not free to act like a private person. Its actions can be subjected to judicial review. The first question is, accordingly,

answered in favour of the petitioners.

Regarding (2)

27. Learned counsel for the petitioners contended that the provision for deposit of earnest money ranging from Rs. 10 lakhs to Rs. 40 lakhs as also

the other fees/charges is arbitrary. The claim was controverted by the counsel for the respondents.

28. It is undoubtedly true that the Corporation has an absolute monopoly for stocking, selling and supplying liquor. However, the question is - Has

the Corporation levied the charges arbitrarily?

29. Supposing the Corporation was not there. The liquor was being sold by licensees. The manufacturers were supplying liquor directly to the

licensees or retail dealers. In that case, stocks of liquor will have to be stored in a warehouse to be maintained by the manufacturer. The stocks

shall not leave the factory premises or the warehouse as may be provided for by law only on payment of excise duty. The sale of the stocks to the

licensee will attract sales tax. All this payment will have to be made by the manufacturer. And then, the licensee or the retail dealer shall pay the

petitioners in accordance with the terms that may be mutually agreed upon by the two. It would depend upon the contract between the seller and

the buyer or the manufacturer and the licensee.

30. What is happening in the present case? The manufacturer makes an earnest money deposit. It supplies the liquor to the Corporation.

According to the terms of the contract, the payment is required to be made within 45 days of the sale of stocks. Can this procedure be described

as so arbitrary as no reasonable person would consider it to be fair?

31. Mr. Giri contended that in the year 2001-2002, the earnest money deposit ranged from Rs. 6 lakhs to Rs. 15 lakhs. It had been subsequently

enhanced to Rs. 10 lakhs and 40 lakhs. He submitted that the requirement of deposit is arbitrary. On behalf of the respondents, it was submitted

that the deposit was intended to ensure a regular supply in accordance with the terms of the rate contract. It was a guarantee against the wrong

doings of the suppliers.

32. It appears that under the conditions stipulated by the Corporation, it undertakes various liabilities. It has to comply with the provisions of the

Kerala Abkari Act, the Standards of Weights and Measures Act and the Kerala General Sales Tax Act. It has to employ staff at the warehouse

for stocking the liquor and to transport it to the retail outlets etc. More than this, in the reply filed on behalf of the respondents, it has also been

averred that ""if the petitioners are prepared to bear all the expenses, including levies and supply stocks on 45 days credit to KSBC"", it has no

objection in foregoing the earnest money deposit. This clearly gives the petitioners a clear choice in the matter. However, the offer of the

Corporation has not been accepted. The reason is obvious. Even the conclusion is inevitable. Despite the offer, the plea raised by the petitioners is

that there is no justification for raising the amount of earnest money deposit to Rs. 40 lakhs.

33. This contention cannot be accepted. Nothing has been placed on the record which may show that the liability of the petitioners on account of

excise, the sales tax and under the provisions of other laws including stocking in warehouses etc. would be less than what they are being asked to

deposit by way of earnest money. In this situation, the challenge to the provisions in Clauses 3(a) and (b) of the notice cannot be sustained.

34. Mr. Giri contended that on the supply of goods by the petitioners to the Corporation, the property in the goods passes to the respondent. The

Corporation has complete domain over the goods. It does nothing to add to the value of the goods. There is no service to the petitioners. Thus, the

levy of service charges at such rate as may be fixed by the Board of Directors viz. 2% etc. is arbitrary. It is virtually a tax on the turnover. On the

other hand, Mr. Santhosh Mathew, learned counsel for the Corporation pointed out that it incurs expenses on the bonded warehouses. Besides

that, there is cost of establishment. The staff had to be posted at different places. Prosecution can be ordered on violation of laws. The excise,

sales tax etc., have to be calculated and deposited. These are services directly to the suppliers. Thus, the levy of service charges was not arbitrary.

35. On a consideration of the matter, we find that the Corporation stocks, supplies and sells the goods belonging to the petitioners. The goods are

not sold by the petitioners to the Corporation at the threshold. In fact, these are supplied for onward sale at the retail outlets to the actual

consumers. In this process, various services are rendered. Thus, it cannot be said that the service charges as demanded by the Corporation are

wholly arbitrary.

36. Mr. Giri submitted that the Corporation extracts the amount at a fixed rate. It is not authorised by any law. Such a levy cannot pass off as a

mere term of contract. It is virtually a tax on the turnover. He further submitted that there was a huge difference between the rate at which the

petitioners supply the goods to the Corporation and that at which each bottle is sold to the consumer.

37. Assuming that the claim as made by the counsel is correct, the Corporation is not running a charitable organization. Profit is not a bad motive.

There is no law, which requires that every Government Corporation must suffer losses. Surely, even the petitioners work on that basis. They also

enter into contracts for the sale of liquor because they find it profitable to do so. Resultantly, the profit, if any, made by the Corporation cannot be

a ground for holding that the levy of service charges or other fees is arbitrary. In fact it appears that the Corporation is recovering a part of its

establishment cost from the petitioners. A part of the cost would be passed on to the consumers. Nothing has been placed on the record to show

that such expenses are not taken into account by the petitioners while calculating their own cost price. The end result is that whatever charges are

paid by the petitioners are ultimately passed on to the consumers. It is unbelievable that the petitioners are running the distilleries etc., at a loss. In

fact, the manufacturers of alcohol take full advantage of the addiction of the consumer. In such a situation, the Corporation cannot be said to be

acting unfairly or arbitrarily.

38. Mr. Giri submitted that the service charges are virtually in the nature of tax. These cannot be imposed without the authority of law.

39. We are unable to accept this contention. There is no material on record to indicate that the service charges do not bare any rational relationship

with the actual cost incurred by the Corporation. Thus, it cannot be said that this constitutes a compulsory exaction of money or that the charges

amount to a tax.

40. Learned counsel for the petitioners submitted that the Corporation is acting as a commercial organization. To render the service is its job. It

cannot ask the suppliers to pay for it. It is undoubtedly true that the activities of the Corporation can be characterised as commercial. However, it

appears to be wholly clear that the Corporation does not merely sell its stocks. It supplies goods to the retail outlets. It even sells the goods. It

incurs expenses. It takes certain risks. These are all for the good of the suppliers as well as the Corporation. In this situation, its action cannot be

said to be wholly arbitrary or unfair.

41. With reference to the document at Ext.P 12 produced with C.M.P. 59055/2002, the counsel submitted that the Corporation makes a

substantial profit. It makes a sizeable contribution to the State''s revenue. Yet, it demands service charges.

42. Merely because the Corporation makes profit, it cannot be said that the action is illegal. No law requires that every Government Corporation

must suffer losses. Therefore, merely because the Corporation makes some profit, or even some contribution to the State"s revenue, it cannot be

said that its action is invalid.

43. In O.P. No. 32431/2002, it was submitted that a demand for service charges had been made in the year 2001-2002. There was no clause in

the contract for payment of service charges. Yet, a demand notice Ext.P8 was issued. It was without jurisdiction.

44. The primary issue being examined by the Bench is - Has the Corporation no right to prescribe a condition that it shall levy service charges?

However, if it is the case of the petitioner in the said Writ Petition that the action is not in conformity with the terms of the contract, it has the liberty

to seek its remedy for violation of contract before the Civil Court. In writ proceedings, such matters are not normally examined.

45. Mr. Giri then submitted that there is an essential difference between a tax and fee. Fee can be charged only for the services provided. Not

otherwise. Since there was no service, the levy of fee was illegal.

46. It is true that in Sirur Mutt"s case (AIR 1954 Section C. 282) the distinction between fee and tax was noticed. However, this distinction is

virtually dwindling by the day. Now, if even a fraction of the fee is realised for the good of the payer, the action cannot be said to be illegal. In any

event, so far as the present set of cases are concerned, the matter is purely one of contract and not of quid pro quo.

47. The challenge to the other provisions in the impugned notice was not pressed by the counsel. No other point has been raised.

In view of the above, it is held that even though the conditions stipulated by the Corporation can be judicially reviewed, yet, in the circumstances of

these cases, we find that there is no ground for interference. Resultantly, these petitions are dismissed. However, the parties are left to bear their

own costs.